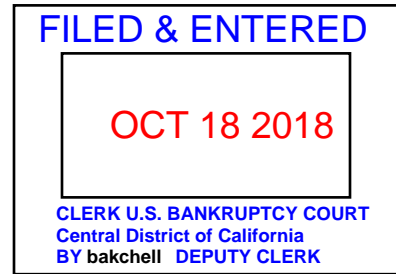


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CHANGES MADE BY COURT

Attorneys for Sam Leslie, Plan Agent

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
ART & ARCHITECTURE BOOKS OF THE
21st CENTURY,
Debtors.

Case No. 2:13-bk-14135-RK
Chapter 11
Adv No. 2:15-ap-01679-RK
Consolidated with Adv. No. 2:14-ap-01771-RK

SAM LESLIE, PLAN AGENT FOR ART &
ARCHITECTURE BOOKS OF THE 21st
CENTURY,

Plaintiff,
vs.

ACE GALLERY NEW YORK
CORPORATION, a California corporation;
ACE GALLERY NEW YORK, INC., a
dissolved New York corporation; ACE
MUSEUM, a California corporation;
DOUGLAS CHRISMAS, an individual; 400 S.
LA BREA, LLC, a California limited liability
company,

Defendants.

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION: (1) TO COMPEL DEFENDANTS
ACE MUSEUM CORPORATION AND ACE
GALLERY NEW YORK CORPORATION
TO RESPOND TO WRITTEN DISCOVERY;
AND (2) TO COMPEL DOUGLAS
CHRISMAS TO AUTHORIZE RELEASE OF
ACE GALLERY NEW YORK
CORPORATION FEDERAL TAX RETURNS**

Hearing:
Date: October 17, 2018
Time: 11:00 a.m.
Courtroom: 1675

1 400 S. LA BREA, LLC, a California limited
2 liability company,

3 Cross-Complainant,

4 vs.

5 ACE GALLERY NEW YORK
6 CORPORATION, a California corporation;
7 ACE GALLERY NEW YORK, INC., a
8 dissolved New York corporation; ACE
9 MUSEUM, a California corporation;
10 DOUGLAS CHRISMAS, an individual; SAM
11 LESLIE AS TRUSTEE OF THE PLAN
12 TRUST FOR ART & ARCHITECTURE
13 BOOKS OF THE 21ST CENTURY,

14 Cross-Defendants.

15 The Motion: (1) to Compel Defendants Ace Museum Corporation and Ace Gallery New
16 York Corporation to Respond to Written Discovery; and (2) to Compel Douglas Christmas to
17 Authorize Release of Ace Gallery New York Corporation Federal Tax Returns (the “Motion”)
18 [Dkt. No. 432], filed by Plaintiff Sam S. Leslie (the “Plan Agent”), Plan Agent for the post-
19 confirmation chapter 11 estate of Art & Architecture Books of the 21st Century (the “Debtor”),
20 came on for hearing in this Court on Wednesday, October 17, 2018, at 11:00 a.m. This Court
21 having considered the Motion, the opposition brief filed by Ace Museum and Ace Gallery New
22 York Corporation, the reply brief filed by the Plan Agent, and the declarations and exhibits filed in
23 support of each of the foregoing, the parties having submitted on this Court’s tentative ruling
24 dated October 16, 2018 (the “Tentative Ruling”), and good cause appearing therefor,

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IT IS HEREBY ORDERED that the Motion is granted in part and denied in part for the reasons stated in the Court's Tentative Ruling, which is adopted as the court's final ruling on the Motion, a copy of which is attached hereto. As stated by the court at the hearing, the time periods for compliance with this order runs from the date of the hearing on October 17, 2018.

##

Date: October 18, 2018

Robert Kwan
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, October 17, 2018

Hearing Room 1675

11:00 AM

2:13-14135 Art and Architecture Books of the 21st Century

Chapter 11

Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

#6.00 Hearing re: Plaintiff's motion: (1) to compel defendants Ace Museum Corporation and Ace Gallery New York Corporation to respond to written discovery; and (2) to compel Douglas Christmas to authorize release of Ace Gallery New York Corporation Federal Tax Returns

Docket 432

Tentative Ruling:

Grant motion to compel discovery in part and deny in part. Order defendant Christmas to execute IRS Forms 4506 to release tax returns of defendants Ace Museum and Ace Gallery New York within 10 days since that request is not opposed by defendants and he may be ordered to sign a consent directive to release tax returns. Order defendants Ace Museum and Ace Gallery New York to produce documents in response to plan agent's document production requests within 30 days since defendants do not oppose production of non-privileged documents, but defendants must produce a privilege log if they withhold documents from production to plan agent based on privilege. Order each of defendants Ace Museum and Ace Gallery New York to take action, including appointing an agent, if they can, to fully respond to plan agent's written interrogatories and requests for admission within 30 days, or provide statements under penalty of perjury that it cannot answer because of the Fifth Amendment privilege asserted by the only knowledgeable person or persons and there is no person who can serve as an agent who could gather and obtain from books, records, other officers or employees, or other sources, the information necessary to answer the interrogatories and requests for admission and sign them on behalf of each defendant without risking self-incrimination. *City of Chicago v. Reliable Truck Parts Co., Inc.*, 1992 WL 109049 (N.D. Ill. 1992), objections overruled, 1992 WL 142630 (N.D. Ill. 1992), on remand from, 768 F.Supp. 642 (N.D. Ill. 1991). While counsel for defendants in his declaration described efforts to find a person to serve as an agent for defendants in lieu of defendant Christmas who claims his Fifth Amendment privilege against self-incrimination

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, October 17, 2018

Hearing Room 1675

11:00 AM

CONT... Art and Architecture Books of the 21st Century Chapter 11

to respond to the plan agent's discovery, including former accountant Gary Mendelson, former bookkeeper Shirley Holst and defendant Christmas's wife, Jennifer Kellen, the declaration is inadequate because there is no evidence of a statement under penalty of perjury from each defendant that as to each written interrogatory and each request for admission, it cannot answer because of the Fifth Amendment privilege assert by the only knowledgeable person or person and that despite diligent efforts, an appropriate agent who could gather and obtain from books, records, other officers or employees, or other sources, the information necessary to answer the interrogatories and requests for admission and sign them on behalf of each defendant cannot be found. The court declines to grant the plan agent's request to order the appointment of agents for defendants Ace Museum and Ace Gallery New York because it does not appear that any of the suggested persons can be compelled to serve, that is, Mendelson and Holst are former employees, Kellen as Christmas's wife probably has the marital privilege and counsel for defendants have not been shown to have authority to act as agents to respond to discovery aside from their ethical concerns about restrictions on attorneys giving testimony in cases representing clients, California Rule of Professional Conduct 5-720, see also, 2 O'Connell and Stevenson, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, paragraph 11:1170 (2018). While it may be proper for counsel to serve as an agent for purposes of responding to discovery, the plan agent cites no authority showing that the court can compel counsel to so act. The court reserves ruling on whether or not defendants' responses to plan agent's discovery requests are adequate until after defendants have had an opportunity to comply with the court's rulings compelling further responses as set forth in this tentative ruling, and thus, determines that it is premature to rule on the plan agent's request for terminating sanctions at this time.

Appearances are required on 10/17/18.

Party Information

Debtor(s):

Art and Architecture Books of the

Represented By